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December 19, 2017

Via ECF and U.S. Mail

MEMO ENDORSED

The Honorable William H. Pauley III
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Hart, et al. v. BHH, LLC d/b/a Bell + Howell, et al.*, Case No. 15-cv-04804

Dear Judge Pauley:

I represent Plaintiffs and the certified classes in the above action. I write pursuant to Section I.B.3 of the so-ordered Notice of Pendency of Class Action and Proposed Schedule for Dissemination of Notice in this case (ECF No. 108) (the “Notice Plan”) and Rule 1.D of Your Honor’s Individual Practices to (1) update the Court regarding the results of the retailer-subpoena program, as directed in the Notice Plan and (2) request a 3-week extension for the dissemination of class notice due to late retailer subpoena responses. Defendants have consented to our extension request. This is our first request for an extension of this deadline.

Results of Retailer-Subpoena Program

Section I.A.1 of the Notice Plan directed Plaintiffs to “subpoena the 10 largest retailers and distributors of the Pest Repellers (comprising approximately 85% of all unit sales)... to produce” contact information for all known Class Members. Thereafter, Section I.B. stated: “[u]pon receipt of all subpoena responses from the Retailers and Distributors, the parties shall report the results of the subpoena program to the court before a determination is made as to whether additional form of class notice are necessary.” Therefore, Plaintiffs report that the subpoena program identified approximately 1,092,632 class members, whose purchases comprise more than half of all Pest Repeller sales during the Class Period.¹ The parties agree, subject to Court approval, that direct notice to these class members, in addition to the other forms of notice already set forth in the Notice Plan, is sufficient under Rule 23(c)(2)(B).

Request For Extension

Additionally, Plaintiffs request an extension of the deadline for issuance of class notice from December 26, 2017 to January 16, 2018. As noted above, Defendants consent to this request, and this is the first request for an extension of this deadline. The reasons for this request

¹ It is impossible to report the precise number of units purchased by these individuals because several of the retailer productions did not notate how many units were purchased in each order. However, the data makes clear that these individuals purchased the majority (and perhaps even a supermajority) of units sold during the class period.

are (1) Plaintiffs received complete productions from the retailer-subpoenas significantly later than anticipated (and later than the date on which the subpoenas commanded production); (2) based on scheduling difficulties due to end-of-year holidays and (3) in order to allow time for the Court to advise if additional forms of class notice will be required.

Very truly yours,



Yitzchak Kopel

CC: All counsel of record (via ECF)

Application granted.

SO ORDERED:



WILLIAM H. PAULEY III
U.S.D.J.

12-19-17